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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
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| 10/755,160 | 01/12/2004 | Steven Tsengas | 1409 | 1237 |
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| 7590 | 08/10/2005 |
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Law Offices of John D. Gugliotta PE, Esq.  
202 Delaware Building, 137 South Main Street  
Akron, OH 44308

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| EXAMINER |
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SHAW, ELIZABETH ANNE

| ART UNIT | PAPER NUMBER |
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|      |
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| 3644 |
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DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/755,160 | <b>Applicant(s)</b><br>TSENGAS, STEVEN |  |
|                              | <b>Examiner</b><br>Elizabeth A. Shaw | <b>Art Unit</b><br>3644                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on 09 June 2005.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 14-20 and 27-57 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) 17 is/are allowed.
- 6)  Claim(s) 14-16, 18-20, 27-33, 35-37, 38-44, 46-48, 49-55 is/are rejected.
- 7)  Claim(s) 34, 45, 56 and 57 is/are objected to.
- 8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \*    c)  None of:
1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-16, 18, 19, 35, 36, 46 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Twizzlers™ candy. Twizzlers™ candies show an extruded, elongated body member having a plurality of ribs, a corresponding plurality of interstitial spaces capable of cooperatively containing at least one consumable treat and a central bore. Wherein the ribs comprise a first series of ribs and interstitial spaces substantially disposed in a direction parallel to the central axis of a first bore. The candy, when in the packaging and before it is peeled into individual strips, is considered to contain multiple parallel bores and is impregnated with a scented aroma.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14-16, 18-20, 35-37 and 46-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham et al (RE. 34, 352) in view of Twizzlers™. Markham et al shows a dog chew toy composed of a thermoplastic, extruded, elongated body

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member 20 having a plurality of ribs 26, a corresponding plurality of interstitial spaces 36 capable of cooperatively containing at least one consumable treat and a central bore 24. Twizzlers™ candies show an extruded, elongated body member having a plurality of ribs, a corresponding plurality of interstitial spaces capable of cooperatively containing at least one consumable treat and a central bore. Wherein the ribs comprise a first series of ribs and interstitial spaces substantially disposed in a direction parallel to the central axis of a first bore. The candy, when in the packaging and before it is peeled into individual strips, is considered to contain multiple parallel bores and is impregnated with a scented aroma. With respect to claims 14-16, 20, 37 and 48, to make the chew toy of Markham '352 shaped like Twizzlers™ would have been obvious to one skilled in the art as an aesthetic design choice.

Claims 27-30, 38-41 and 49-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham '352 in view of Twizzlers™ as applied to claims 14, 15 and 16 above, and further in view of Herrenbruck (6,484,671). The combination of the Markham '352 and Twizzlers™ does not disclose the use of caps for closure.

Herrenbruck shows a pet chew toy 100 having a bore 108 enclosed at both ends by threaded or bond molded caps 106. With respect to claims 27-30, 38-41 and 49-52, to use the caps of Herrenbruck with the pet toy of the combination of Markham '352 and Twizzlers™ would have been obvious to one skilled in the art as a replacement of functional equivalents, replacing one pet toy for the other with the intention of slowing or stopping the release of treats from the toy.

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Claims 31-33, 42-44 and 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markham '352 in view of Twizzlers™ and Herrenbruck as applied to claims 27 and 38 above, and further in view of Coombs et al (5,634,436). The combination of the Markham '352 and Twizzlers™ does not disclose the use of a sound module. Coombs et al teach a pet toy having a central bore 14 housing a sound module 56 generating a prerecorded sound upon activation, see column 4, lines 64-67 and column 5, lines 1-26. The sound module 56 is braced by a cushion 63 and support 58 with fasteners 60 to halt movement within the bore 14. With respect to claims 31-33, 42-44 and 53-55, to use the sound module of Coombs et al with the pet toy of the combination of Markham '352 and Twizzlers™ would have been obvious to one skilled in the art in order to attract and amuse the animal into using the device further.

***Allowable Subject Matter***

Claim 17 is allowable.

Claims 34, 45, 56 and 57 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following claim language drafted by the examiner and considered to distinguish patentably over the art of record in this application, is presented to applicant for consideration:

The language would be added to the four remaining independent claims equally.

Taking 16 as an example:

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16. (Currently Amended) --*An elastomeric*-- pet chew toy comprising:

an elongated body member --*having two lobes monothically formed therein, said body member*-- having a plurality of ribs and a corresponding plurality of interstitial spaces formed therebetween, said plurality of ribs and said plurality of interstitial spaces capable of cooperatively impinging at least one consumable treat;

a first bore --*extending through the first lobe*-- and a second bore --*extending through the second lobe, said second bore parallel to the first bore*--;

wherein at least one of said first bore and said second bore may impinge at least one or more consumable treats.

### ***Response to Arguments***

Applicant's arguments filed June 5, 2005 have been fully considered but they are not persuasive. Twizzlers™ in a bag stuck together can be considered to form a chew toy having a plurality of bores and such bores may even be twisted slightly about each other. It is known in the art that dog treats come in many sizes and consistencies. The use of canned dog food as the treat in the referenced art by Markham, the use of bird seed and peanut butter is also well known and would certainly, especially in the case of the peanut butter, fit into the interstitial spaces in the candy.

The Examiner has also taken the Twizzlers™ to attempt to create dog chew toy. Granted the use of Twizzlers™ as a chew toy would be brief, but the dog would still need to chew it. As for the claim of strengthening the gums and jaws of a pet, this is not recited as a use. A chew toy does not necessarily need to improve on an animal's health as it entertains, it merely has to entertain. The Twizzlers™ of the Examiner's

trials did hold peanut butter and canned food when applied with a knife to impinge on the interstitial spaces formed between the ribs. It is noted that each Twizzler™ had to be coated before use.

***Conclusion***

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth A. Shaw whose telephone number is 571-272-6908. The examiner can normally be reached on M-Th 10:00-3:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elizabeth A. Shaw  
Examiner  
Art Unit 3644

August 8, 2005



TERI PHAM LUU  
SUPERVISORY  
PRIMARY EXAMINER<sup>®</sup>



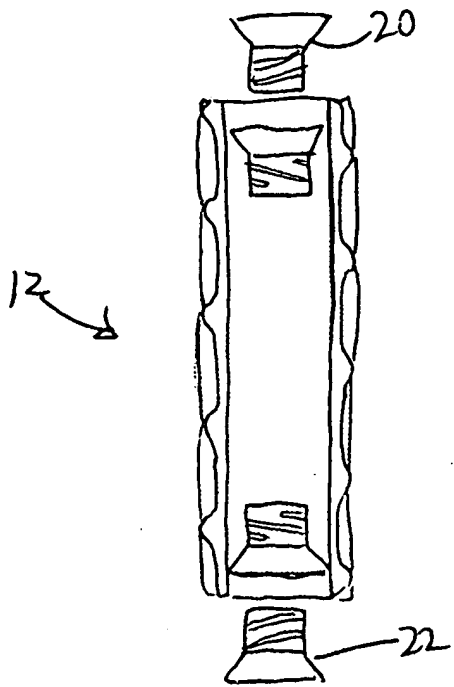


FIG. 6

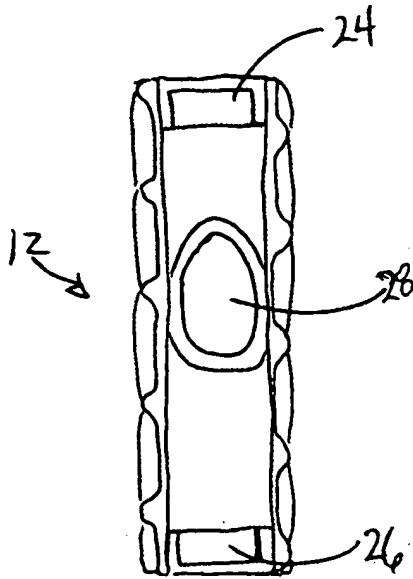


FIG. 7

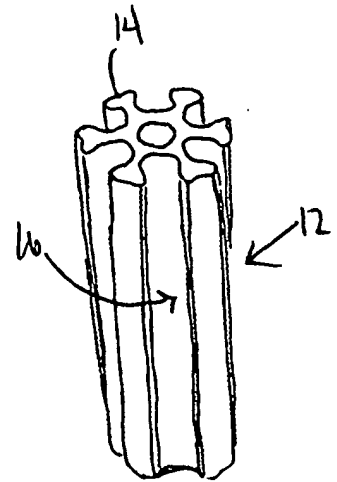


FIG. 8

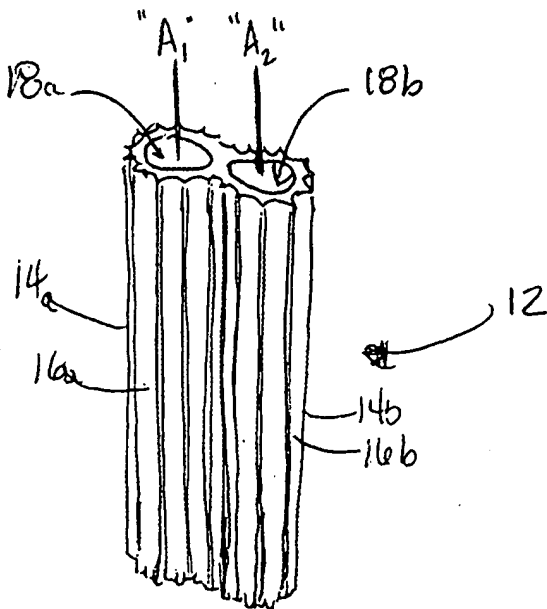


FIG. 9

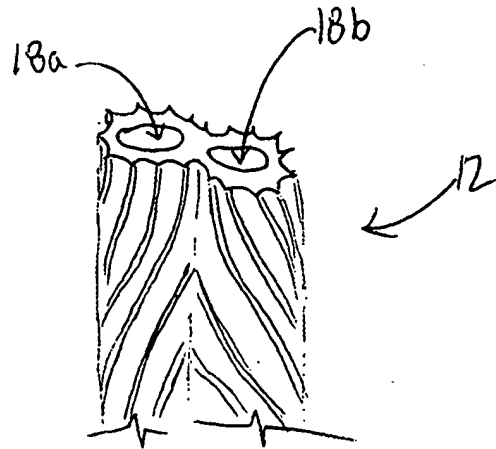


FIG. 10

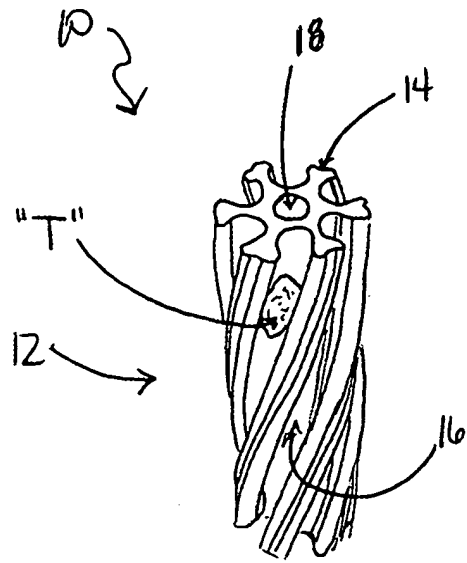


Fig. 1

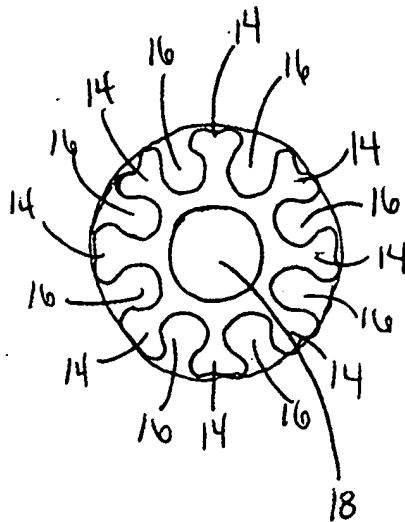


Fig. 2

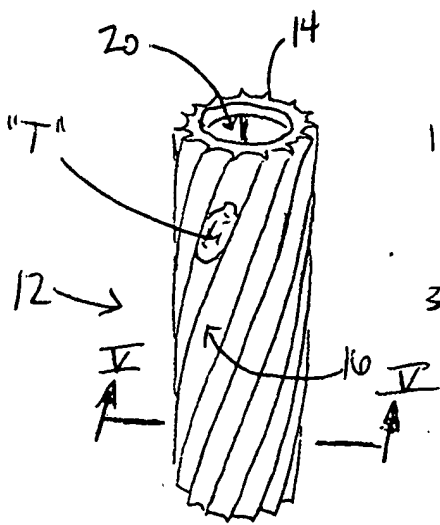


Fig. 3

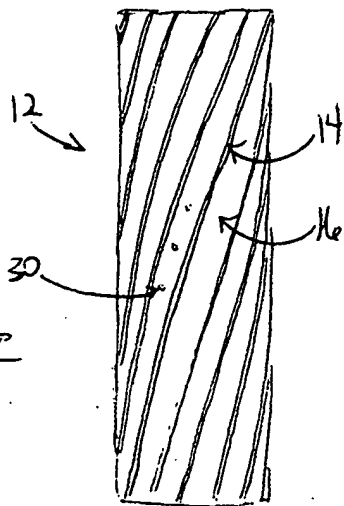


Fig. 4

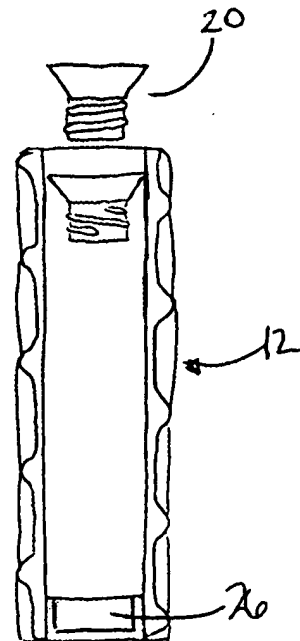


Fig. 5